



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 7, 2004

Mr. Joe A. De Los Santos  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P. O. Box 460606  
San Antonio, Texas 78246-0606

OR2004-2808

Dear Mr. De Los Santos:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199004.

The East Central Independent School District (the "district"), which you represent, received a request for (1) all chromatographs from all Drash Consulting Engineers, Inc. ("Drash") studies/surveys, (2) all quality assurance summaries from Drash studies, and (3) copies of the complete analytical studies. You state that you are releasing information responsive to items (2) and (3) of the request. You claim that the information responsive to item (1) of the request does not constitute "public information" as defined by section 552.002 of the Government Code. We have considered your arguments.

The Public Information Act (the "Act"), chapter 552 of the Government Code, is applicable to "public information." See Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Thus, virtually all of the information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.022(a)(1); see also Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also applies to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for a governmental body, and the

governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2). Under the Act, a governmental body must make a good-faith effort to relate a request for information to public information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). However, the Act does not require a governmental body to answer factual questions, conduct legal research, release information that does not exist, or create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.-San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990). Likewise, the Act does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that received the request for it. *See* Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). Thus, any information to which the district does not have a right of access would not be considered "public information" under the Act.

You state that the district entered into a written contract with Drash to perform a limited methane gas survey, a subsurface gas survey, and Phase 1 environmental site assessment process at a proposed site for a district middle school. You inform us, however, that the district did not contract with Drash to obtain a full raw data package, and that as a result, the district does not own or have the rights to the requested chromatographs. Based on your representations that the district does not own or have a right of access to information responsive to item (1) of this request, we conclude the requested chromatographs are not "public information" under the Act because the district neither possesses nor has access to this information. *See* Gov't Code § 552.002.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 199004

c: Mr. Harold Lamascus  
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